

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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ORDER

Kishnaram vs. Board of Revenue & Ors.

S.B. CIVIL WRIT PETITION NO.278/1996 UNDER
ARTICLES 14 AND 16 OF THE CONSTITUTION OF
INDIA.

DATE OF ORDER : 18th Sept., 2007

REPORTALBE

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.BN Kalla, for the petitioner.

Mrs. RR Kanwar, Dy. GA for the State.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the Board of Revenue dated 7.4.1994 by which petitioner's second appeal was dismissed by the Board of Revenue. The petitioner first challenged the order of the Board of Revenue dated 7.4.1994 by filing review petition, which too, was dismissed vide order dated 5.5.1994, hence, this writ petition.

Brief facts of the case are that an agricultural land was allotted to one Kishnaram S/o Baluram and in relevant register of the year 1953, the details of Kishnaram S/o Baluram alongwith his family members as on the year 1953 is

also recorded, which is at item no.21 of the register. As per those entries, the said Kishna Ram was of the age of 35 years in the year 1953, he had wife Rukhama aged 30 years, daughter Sugani aged 13 years, son Moti aged 9 years and daughter Maya aged 7 years. The land originally allotted to said Kishna Ram was of chak no.4NP murraba no.9 measuring 24 bigha 10 biswas. Another land in exchange of the above land was given to said Kishnaram S/o Baluram by the order of the District Collector dated 27th Sept., 1957 and this land is of chak no.24NP murraba no.51 measuring 24 bigha. All the revenue relating to this land was duly deposited upto the year 1984. In the year 1985, it was brought to the notice of the revenue authorities that Kishnaram S/o Baluram left India and went to Pakistan. The land, which was allotted to Kishnaram S/o Baluram has been occupied by another person, who himself is claiming to be Kishnaram S/o Baluram (present petitioner) and is showing his caste as Meghwal. The detail inquiry was conducted and information were gathered from the relevant record and, thereafter, the opportunity was given to present petitioner to show that he is the real person Kishnaram S/o Baluram to whom the land was allotted as refugee coming from Pakistan. The SDO, Raisinghnagar by detailed order dated 21st May, 1985 held that the present

petitioner's age as in the year 1984 is about 40 years, his wife is Tulchhi is aged 45 years, his son is Dhularam aged 15 years, his daughter is Lichhama aged 12 years, his son is Taru aged 5 years and his daughter is Champa aged 8 months. But as per the facts mentioned in the register of allotment of land to Kishnaram S/o Baluram, the age of Kishnaram should have been 65 years in the year 1985. In the statement, the present petitioner stated that his son Dhularam was of the age of 10-12 years, his daughter Lichhama was of the age of 8-9 years, his another daughter Taru was of the age of 5 years and his son Champa was of the age of 1 year and he had no son having name as Moti. He in his statement stated that he does not know where his father-in-law is living in Pakistan. From the statement of maternal-uncle of present petitioner, it came on record that petitioner's marriage took place in India only. In view of the detail reasons, the SDO, Raisingnagar held that petitioner is not the same person Kishnaram S/o Baluram to whom the land was allotted in the year 1953.

The order of the SDO dated 21st May, 1985 was challenged before the Revenue Appellate Authority, Sri Ganganagar, who after re-appreciation of all the evidence reached to the same conclusion and dismissed the appeal of

the petitioner and upheld the finding recorded by the SDO. This order of the Revenue Appellate Authority dated 22nd March, 1994 was challenged by preferring second appeal before the Board of Revenue by the petitioner, which was dismissed by the Board of Revenue, Ajmer on 7.4.1994 and review against the same was also dismissed vide order dated 5.5.1994. Hence, this writ petition has been filed by the petitioner to challenge all above mentioned orders.

Learned counsel for the petitioner submits that petitioner is in possession of the land in dispute since 1953 and thereafter got the land in exchange in the year 1977 he is in continuous possession of the exchanged land and now almost more than 50 years' have passed from the original allotment and more than 30 years time from the exchange of land have passed. It is also submitted that the revenue authorities had no jurisdiction under the provision of Displaced Persons Compensation & Rehabilitation Act, 1954 or under the Rajasthan Colonisation (Allotment & Sale of Government Land in Indira Gandhi Canal Project Area) Rules, 1975 to cancel the allotment of land of petitioner nor they could have passed the order of eviction of the petitioner. Learned counsel for the petitioner further submitted that the Hon'ble Supreme Court in the case delivered in Brijlal Vs.

Board of Revenue & Ors reported in AIR 1994 SC 1128 held that rejection of permanent allotment of land on ground that allottee was minor on date of temporary allotment is not proper. According to learned counsel for the petitioner said view was taken by the Hon'ble Supreme Court after considering the long possession of the petitioner in above case and the Hon'ble Supreme Court held that it would be travesty of justice to dispossess the appellant from the land which he is nourishing for over a period of two decades. In view of the above reasons also, the petitioner cannot be dispossessed from the land now after 30 years. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Tej Singh Vs. State of Rajasthan & Ors reported in RRD 1995 68. In this case, a Gram Sewak concealing his real status procured land allotment order and after some five years, he resigned and took up his avocation as an agriculturist and was continuing to cultivate that land personally and by the time, he was sought to be dispossessed about 20 years passed. The Hon'ble Supreme Court in that circumstances, observed that the petitioner has developed the land from loans then in such circumstances, the cancellation of allotment order though was valid, still liable to be set aside and set aside the cancellation

of allotment. Learned counsel for the petitioner also relied upon the judgment of this court delivered in the case of LRs of Sarjit Singh Vs. Board of Revenue & Ors. reported in 2006 (3) RDD 1481 (Raj.) wherein also this Court after taking note of the cultivatory possession over the land from last more than 16 years, held that his dispossession at this stage will be arbitrary.

Learned counsel for the petitioner also submitted that as per Section 36 of the Act of 1954, the jurisdiction to decide the matter in such circumstance lies with only Union of India and not with the State Government or its authorities.

Reply has been filed by the respondents and respondents submitted that all the orders passed by the courts below are factually right and further it is submitted that in fact, it is not a matter of cancellation of any allotment. In present case, no land was allotted to the present petitioner and present petitioner by illegally entered into the land in question and, therefore, only order of eviction has been passed against the petitioner as the land is falling in the area of revenue authorities.

I considered the submissions of learned counsel for the parties and perused the facts of the case. The petitioner's specific contention is that land was allotted to the petitioner

originally in the year 1953. The petitioner submitted affidavit alongwith the writ petition showing his age as 40 years in the year 1996 then at the time of allotment of land, the petitioner's age was only 6 years. It is not a case where the petitioner's allotment is sought to be cancelled on the ground that he by giving false fact about his age obtained the allotment of the land so as to compare the facts of this case with Brijlal's case. This fact is relevant to find out whether the petitioner's himself was allotted the land ever and the petitioner is the same person whose name is entered in the relevant register where particulars of person is recorded to whom land was allotted in the year 1953. It is further relevant to mention here that petitioner is not disputed the entries made in the relevant register wherein complete details have been given of allotment of land to one Kishnaram S/o Baluram nor petitioner disputed entry of the name of members of the said Kishnaram's family. In said register, the Kishnaram's age in the year 1953 was recorded as 35 years, his wife's age was recorded as 30 years, his daughters were of the age of 13 and 7 years and his son's age was 9 years in the year 1953. Admittedly, the petitioner's age even in the year 1984 was only about 40 years as recorded in the order of the learned SDO dated 21st May, 1985. The petitioner's

and his family members' age were one of the very relevant fact and SDO in its order dated 21st May, 1985 observed that petitioner's age at the time of his recording of evidence was not more than 40 years. That was the position in the year 1985 and now the petitioner has preferred this writ petition in the year 1996 showing his age as 40 years. This additional fact further demonstrate that at the time of allotment of the land, the petitioner was nowhere in picture and this land was allotted to Kishnaram S/o Baluram who was of the age of 35 years. The petitioner in his statement stated that land was allotted for the first time in the year 1974 and that fact was wrong in view of the petitioner's own admission in the writ petition. He also stated that when he came from Pakistan he was of the age of 16 to 17 years . However, he stated that his marriage took place in Pakistan, thereafter, he admitted that at that time he had no children and after coming to India, first child born to him. He would not disclose where his father-in-law living in Pakistan. The rest of the facts in relation to age of the children of the petitioner as compared to the age of the children of the Kishnaram S/o Baluram – original allottee clearly shows that petitioner was not the person to whom the land was allotted. This finding of fact has been approved by two appellate authorities. Therefore, the writ petition of the

petitioner deserves to be dismissed only on this count that the writ jurisdiction is not the fourth appellate jurisdiction so as to re-appreciate the evidence again. Even the petitioner could not make out any case even if facts are re-appreciated.

Learned counsel for the petitioner relied upon the judgment of Birjlal (supra) but it appears that judgment has been misconstrued only. In Brijlal's case a land was allotted to the allottee in the year 1970 on temporary cultivation basis. In the year 1974 he applied for permanent allotment of the said land, but the application was rejected on the ground that from the photo affixed on the application form, it appeared that he was a minor. The appeal preferred by the allottee was dismissed and the Board of Revenue Rajasthan in revisional jurisdiction set aside the order and remanded the matter back to the original authority for afresh inquiry and a decision. On remand the Assistant Colonisation Commissioner by his order dated January 19, 1976 again rejected the application of the appellant on the ground that at the time when temporary allotment was made to him he was a minor. To disprove this allegation, the appellant placed on record the birth certificate obtained from the Head Master of the Government Primary School according to which, his date of birth was March 18, 1952 . In addition, he also filed a

certificate of the doctor showing that on the date of temporary allotment of the land, he had attained majority. Both the documents were rejected by the Assistant Colonisation Commissioner while rejecting the application for permanent allotment of land. Appeal against the said order was dismissed by the Addl. Colonisation Commissioner by his order dated February 21, 1977. The revision petition preferred by the said allottee before the Board of Revenue Rajasthan was rejected on 24.1.1980. Thereafter, the writ petition filed by the petitioner was dismissed by the High Court on July 13, 1982. Therefore, the allottee preferred special leave to appeal.

In Brijlal's case the Hon'ble Supreme Court observed that the appellant was landless person and this fact was not disputed. He was given land on temporary cultivation lease hold basis and in view of the said lease he was eligible to permanent allotment of land on priority basis under the Rules. The Hon'ble Supreme Court held that on the date when the appellant applied for permanent allotment he was holding the temporary allotment. Thereafter, the Hon'ble Supreme Court observed that if the appellant had procured temporary allotment by giving false declaration regarding age then proceedings for cancelling temporary allotment should have

been undertaken. The temporary lease of the appellant was never cancelled. Therefore, the Hon'ble Supreme Court held that appellant being "temporary cultivation lease-holder", permanent allotment could not have been denied to him under the Rules. The facts referred above in detail clearly shows that that was a case decided on the facts and because of the reasons that said allottee's original allotment of land was never cancelled if it was obtained by fraud or by disclosing wrong facts. Therefore, when said allottee applied for permanent allotment of land on the basis of his priority created in his favour because of allotment of land on temporary cultivation lease hold rights then in those proceedings the order which was passed earlier on allotment of land to the allottee could not have been ignored. In the above judgment, the Hon'ble Supreme Court further clearly held that there was not an iota of evidence on the record to show that the appellant was minor on the date of temporary allotment.

In view of the above reasons, Brijlal's case was decided on question of facts and in background of these facts the Hon'ble Supreme Court observed that it would be travesty of justice to dispossess the appellant from the land which he is nourishing for over a period of two decades. Brijlal's case

nowhere says that a person who has not been allotted the land and he entered into the land of others by false impersonation is entitled to title over the land. The petitioner if remained in possession of the land because of the stay order granted by this Court in this writ petition, then that cannot be ground to give land to the petitioner as it will perpetuate illegality and person who committed fraud will be benefited.

In Tej Singh's case (supra) a Government servant who at the relevant time was not entitled to obtain the allotment of land was allotted land and, thereafter, he resigned and took the agriculture as his source of income. He cultivated the land for 20 years and for that purpose, he took loan then the Hon'ble Supreme Court in the facts of that case refused to set aside the valid order of cancellation of allotment. That case was also decided in view of the facts of that case and has no application to the controversy in the present case.

The judgment of LRs of Sarjitt Singh (supra) of this Court has passed on altogether different facts. In this case, a lease for temporary cultivation was granted, which was found not forged nor it was ever cancelled. The order for allotment of land for permanent cultivation was not based on forged document then this Court held that petitioner is having

cultivatory possession over the land from last more than 60 years and, therefore, his dispossession at this stage shall be arbitrary.

Contrary to the above facts, in this case, the petitioner failed to disclose when he came in possession of the land in dispute because of the reason that petitioner's entry in the land in the year 1953 cannot be believed nor the petitioner's entry in the land in the year 1977 itself can be believed when the land in exchange was given to original allottee. The petitioner did not plead any specific fact apart from the fact that he was in cultivatory possession of the land since beginning, therefore, it cannot be said that the order dated 21st May, 1985 was passed and by that time, the petitioner had long settled possession or he might have incurred some expenditure to develop the land. However, that also would not have changed the position because of the reason that the petitioner's old settled possession is not proved.

Apart from above, it is not a case of cancellation of allotment but it is a case of removing of a person who was never allotted land by any authority. Therefore, the contention of the learned counsel for the petitioner based on Section 36 of the Act of 1954 about the bar jurisdiction of the authorities has no application because of the reason that the

authorities have not cancelled allotment of land of original allottee Kishnaram S/o Baluram and passed order of eviction of the petitioner only because no land was ever allotted to the petitioner.

In view of the above reasons, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-